

MHCC020004402025



Presented on : 07-01-2025
Registered on : 07-01-2025
Decided on : 26-03-2025
Duration : 2M, 19 days

**IN THE COURT OF SPECIAL JUDGE UNDER TADA(P) ACT AT
BOMBAY
TADA MISC. APPLICATION NO.57 OF 2025
IN
BBC SPECIAL CASE NO.1 OF 1993**

The Competent Authority,
SAFEMA/NDPS, Mittal Court,
C-Wing, 3rd Floor, Nariman Point,
Mumbai-400 021.

..Applicant

V/s

1. Central Bureau of Investigation
2. State of Maharashtra,
(Through Commissioner of Police,
Greater Bombay)
3. Ibrahim Abdul Razak Memon
MHB Colony, Bldg. No.21,
alias Tiger Memon Room No.1069,
Mahim, Mumbai-400 016
(declared as Absconder by the Government of Maharashtra
vide order Mumbai-400 016. Dated 17/05/93
in pursuant to The COFEPOSA Order No.SPL.3(A)/
PSA 0191/615 dt. 3.10.1992)

4. Abdul Raak Suleman Memon
MHB Colony, Bldg. No.21,
Room No.1069, Mahim, Mumbai-400 016
 5. Mrs.Harnifa A.R.Memon
MHB Colony, Bldg. No.21,
Room No.1069, Mahim, Mumbai-400 016
 6. Essa Abdul Razak Memon
MHB Colony, Bldg. No.21,
Room No.1069, Mahim, Mumbai-400 016
 7. Yusuf Abdul Razak Memon
MHB Colony, Bldg. No.21,
Room No.1069, Mahim, Mumbai-400 016
 8. Suleman Abdul Raak Memon
MHB Colony, Bldg. No.21,
Room No.1069, Mahim, Mumbai-400 016
 9. Mrs.Rubina Suleman Memon
MHB Colony, Bldg. No.21,
Room No.1069, Mahim, Mumbai-400 016
 10. Yakub Abdul Razak Memon
MHB Colony, Bldg. No.21,
Room No.1069, Mahim, Mumbai-400 016
 11. Mrs.Rahin Yakub Memon
MHB Colony, Bldg. No.21,
Room No.1069, Mahim, Mumbai-400 016
 12. Ayub Abdul Razak Memon
MHB Colony, Bldg. No.21,
Room No.1069, Mahim, Mumbai-400 016
 13. Mrs.Reshma Ayub Memon
MHB Colony, Bldg. No.21,
Room No.1069, Mahim, Mumbai-400 016
 14. The Court Receiver,
Bombay High Court, Mumbai.
- ..Non-applicants**

Appearance

Ld. adv. Shreeram Shirsat a/w adv. Nikhil Daga for the applicant.
Ld. S.P.P. Deepak Salvi for CBI/Non-applicant No.1 and 2.
None appeared for non-applicant Nos.3 to 13
Mrs. Priti U. Pawshe, Assistant Section Officer representative of Court
Receiver, Bombay High Court for Non applicant No.14

CORAM: HIS HONOUR JUDGE SHRI V.D. KEDAR,
Presiding Officer of Designated Court for
Bombay Blast Case, Gr. Bombay
(C.R. No.40)

DATE: 26th March, 2025.

ORAL ORDER

1. The applicant has filed present application for release of property in it's favour pursuant to the forfeiture of property under Section 7 of the Smugglers and Foreign Exchange Manipulator's Act, 1976 (hereinafter referred to as '**SAFEM [FOP] Act**').

2. It is submitted that the functions of the applicant is to trace the illegally acquired properties of smugglers and drug traffickers and order for forfeiture of the said properties to the Central Government free from all encumbrances under the provisions of SAFEM(FOP)Act and Chapter V-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in Short, '**NDPS Act**')

3. The forfeiture proceedings were initiated against Ibrahim Abdul Razak Memon on the basis of detention order dated 03/10/1992 issued by the Government of Maharashtra, Home

Department under Section 3(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Act, 1974 (in short **COFEPSA**). Thereafter, the then Competent Authority *vide* order dated 28/09/1993 passed under Section 7 of the SAFEM(FOP) Act, had ordered the forfeiture of various properties. However, subsequently said properties were attached by the Designated TADA Court *vide* order dated 14/01/1994 and appointed the Court Receiver, Bombay, High Court, to take possession, custody and/or the management of various properties under attachment.

4. Meanwhile, the affected persons challenged said order of forfeiture before the Hon'ble Appellate Tribunal, however, it was dismissed *vide* order dated 13/11/1995 on the ground of time barred. Thereafter, affected persons have challenged said order before the Hon'ble Supreme Court. The Hon'ble Supreme Court was pleased to remand the matter back to the Hon'ble Appellate Tribunal *vide* order dated 25/04/1997. However, the Hon'ble Appellate Tribunal *vide* order dated 04/11/1999, dismissed the appeal of affected persons.

5. Thereafter, the Competent Authority moved an application before the Designated TADA Court to release the said properties from the attachment and to deliver its possession. Subsequently, one of the affected person filed Criminal Writ Petition No.1442 of 2000 before the Hon'ble Bombay High Court, which was dismissed *vide* order dated 21/03/2005.

6. It is contended that the record of the present proceedings is very old i.e. more than 30 years. Therefore, on the basis of available office records, the present status of the proceedings is ascertained that the forfeiture order of the various properties *vide* order dated 28/09/1993 has attained finality. Most of the properties covered under the said forfeiture are still under the attachment of this Court being Special Designated TADA Court, except three properties i.e. flat No.22, 25 and 26, Al Hussain Co-op. Housing Society which were released from the attachment by this Court *vide* order dated 29/08/2024, passed in TADA Misc. Appln No. 850/2024.

7. It is contended that the ownership of the properties lies with the Central Government through the Competent Authority as the said properties were forfeited to the Government *vide* order dated 28/09/1993. Hence, the applicant prayed to lift the attachment and to release the immovable properties as listed in Annexure-C to the applicant upon such terms and conditions as this Court may deem fit and proper.

8. Non applicant Nos.1 and 2 filed their reply on the application itself and have given no objection for passing the order allowing prayers of the applicant.

9. Though, service was effected upon non applicant Nos.3 to 13, but, they failed to file reply. The applicant has filed affidavit service (Ex.4) to that effect. Hence, the matter proceeded without reply of non applicants Nos.3 to 13.

10. Non applicant No.14, Court Receiver, Bombay High Court filed Court Receiver's Report No.13/2025 (Ex.2). It is submitted that pursuant to the order dated 14/01/1994 passed by the Hon'ble TADA Court in Misc. Application No.623 of 1993, the Court Receiver, High Court, Bombay has been appointed as receiver of the properties mentioned in the schedule of immovable properties in MA No.623 of 1993 and committed the same to the possession, custody and/or management of the receiver. It is further ordered that the Court Receiver High Court, Bombay to take possession of the properties which are lying vacant after preparing necessary inventories. Properties which are lying vacant being taken in possession by the Court Receiver in presence of Chief Investigating Officers and/or officers deputed by him for the said purpose. So far as properties which are in possession of tenants/occupants, the Court Receiver shall take notional possession without disturbing the tenants/occupants' possession and shall exercise all such powers for the realization, management, protection, preservation and improvement of the properties including collection of rent/profit thereof.

11. It is submitted that as per office record and proceedings, several properties are already handed over by the Court Receiver as per the orders passed from time to time. In view of order dated 29/08/2024, passed in MA No.850 of 2024, the representative of Court Receiver office, on 03/09/2024, handed over physical possession of flat No.22, 25 and 26 situated at Al Hussain Co-op. Housing Society to the applicant. Thereafter, the office of Court Receiver issued letter dated 27/02/2025 and 03/03/2025 to the

applicant to take possession of remaining disputed properties mentioned in Attachment order dated 14/01/1994, however, no one from the office of the applicant came forward and filed the present application.

12. It is further contended that in view of the direction issued by this Court to take review of all the properties in possession of Court Receiver, a meeting of all the parties was called on 17/03/2017. However, none of the parties attended the said meeting. Accordingly, Court Receiver Report No.85 of 2017 was submitted before this Court. Thereafter, again Court Receiver Report No.355 of 2018 was submitted for seeking discharge of the Court Receiver without passing accounts and for directions. Both the reports are still pending. The office of Court Receiver has prepared provisional Statement of Accounts and as per said statements, there is credit balance of Rs. 2,67, 67,151/- available in the Suit account. The cost, charges and expenses of the Court Receiver is of Rs.7,90,865/-. Therefore, non applicant No.14 prayed to direct the applicant to take possession of remaining properties, to discharge the Court Receiver, High Court Bombay without passing account and further reliefs.

13. The applicant has filed reply (Ex.3) to the Court Receiver Report. It is submitted that at present the applicant is claiming possession of 14 immovable properties as mentioned in Annexure-C. So far as other properties, which are mentioned in Court Receiver's report dated 06/03/2025, are concerned the applicant is seeking 8 weeks time regarding present status of each and every property as the record is bulky and more than 30 years old. It is further

submitted that no case involving respondent No.3 was pending before any Higher Court, hence, the application is pertaining to only 14 immovable properties.

14. Heard the Ld. adv. Shreeram Shirsat for the Applicant and Mrs. Priti U. Pawshe, Assistant Section Officer representative of Court Receiver, Bombay High Court for Respondent No.14. Perused the record.

15. Upon perusal of record and in view of submissions of parties, it reveals that in view of forfeiture order dated 28/09/1993 passed by the Competent authority, SAFEMA/NDPSA, it has attached various properties of Ibrahim Abdul Razak Memon and Tiger Memon as they have been ordered to be detained by the Government of Maharashtra, Home Department (Special) *vide* its order No. SPL.3(A)/PSA-1091/615 dated 03/10/1992 issued under Section 3(1) of **COFEPSA**. The said order of detention is neither be revoked nor quashed by any Court of Competent jurisdiction. It is submitted that the affected persons have challenged the said order before the Appellate Tribunal. However, the appeal came to be dismissed on 13/11/1995 on the ground of limitation. Thereafter, the aggrieved persons have challenged the said order before the Hon'ble Supreme Court *vide* Criminal Appeal No.464 of 1997 with 465-471 of 1997. The Hon'ble Supreme Court was pleased to set aside order dated 13/11/1995 *vide* order dated 25/04/1997 and directed the Appellate Tribunal to hear and dispose of the appeal in accordance with the law. After remand of the matter, the Appellate Tribunal was pleased to dismiss said appeals *vide* order dated 04/11/1999. The aggrieved

persons challenged said order before the Hon'ble Bombay High Court *vide* Writ Petition No.1442 of 2000. However, the Hon'ble Bombay High Court *vide* its order dated 21/03/2005 was pleased to dismiss the writ petition. Nothing on record to show that order dated 21/03/2005 was ever challenged and any order regarding same has been passed by the Higher Courts. Thus, in view of above orders, the order of forfeiture of properties dated 28/09/1993 attained finality.

16. It is pertinent to note that the Al Hussain Co-op. Housing Society Ltd., has filed TADA Misc. Application No.850 of 2024 against the applicant, non applicant No.1 and non applicant No.14 before this Court. In the said matter, copy of all the above orders has been filed by the parties. While disposing of said Misc. application No.850 of 2024, this Court has ordered to lift attachment order dated 14/01/1994 in respect of flat Nos. 22, 25 and 26 situated at Al Hussain Co-op. Housing Society Ltd and to hand over its possession to the Central Government through the applicant. Copy of said order is filed on record by the applicant.

17. Herein, it is to be further seen that after passing of forfeiture order dated 28/09/1993 by the Competent authority, SAFEMA/NDPSA the Special Designated TADA Court, in Misc. Application No.623 of 1993 was pleased to attach various properties including disputed properties *vide* order dated 14/01/1994. It further reveals that at that time nobody has informed about the forfeiture order. Therefore, the Competent Authority moved an application dated 25/07/1994 before the Special Designated TADA

Court to release said disputed properties including various properties from the attachment and to deliver the possession of the same to the Central Government. During the course of arguments, it is submitted that, thereafter, in view of the order of the Hon'ble Supreme Court dated 25/04/1997, the respondent no.2 has withdrawn the said application. Thereafter, again after passing of order dated 04/11/1999 by the Appellate Tribunal, the respondent no.2 has filed M.A. No. 295/2000 for similar reliefs and it is yet to be decided.

18. Here, it is also important to note that the Court Receiver has submitted its Report No.13/2025 (Ex.2), thereby submitted that in view of order dated 29/08/2024 passed by this Court, the office of Court Receiver had handed over possession of three flats i.e. 22, 25 and 26 of Al Hussain Co-op. Housing Society, Mahim, West, Mumbai to the Central Government through the applicant. In fact, the office of the Court Receiver has requested the applicant to take possession of remaining properties lying with it in view of order dated 14/01/1994 passed by this Court and to discharge the Court receiver subject to payment of costs, charges and expenses.

19. Thus, after going through the documents, such as copy of order passed by Competent authority SAFEMA/NDPSA dated 28/09/1993 and the copy of order of Appellate Tribunal, and the Hon'ble Bombay High Court, it reveals that various properties including the properties at Annexure-C are forfeited to the Central Government free from encumbrances under Section 7 of the SAFEM (FOP) Act, 1976. However, at the time of passing of order of attachment dated 14/01/1994 by the Special Designated TADA Court

in BBC Misc. application No.623 of 1993, the forfeiture proceedings were not brought to the notice of Special Court. Though, thereafter, the Competent Authority had moved M.A. No.406/1994 (withdrawn) and then M.A. No.295/2000 for release of said properties from the attachment and to deliver its possession, but, the said application was not proceeded properly by the parties and thus it seems to be undecided till date. Upon being asked to find out the status of the application, it is informed that it is not available, as the record is bulky and very old. Hence again direction to that effect is given.

20. Now, in view of forfeiture order dated 28/09/1993, various properties including properties as mentioned in Annexure-C are forfeited to the Central Government free from encumbrances and as such Central Government through the applicant is entitled to get possession of 14 immovable properties as mentioned in Annexure-C. Therefore, I am of the view that, it is necessary to lift/set aside attachment order dated 14/01/1994 and the possession of the immovable properties as mentioned in Annexure-C needs to be handed over to the Central Government through the applicant in view of forfeiture order passed on 28/09/1993. In view of the report Ex.2, the Court Receiver High Court Bombay needs to be discharged in respect of above properties. Hence, the following order: -

ORDER

1. Misc. Application No. 57 of 2025 is hereby allowed.
2. The attachment order dated 14/01/1994 in respect of 14 immovable properties as mentioned in Annexure-C are hereby lifted/set aside and the possession of said properties is hereby

handed over to the Central Government through Competent Authority from the Court Receiver, High Court, Bombay.

3. The Court Receiver, High Court, Bombay, is hereby discharged in respect of above 14 immovable properties as mentioned in Annexure-C without passing accounts and subject to the payment of costs, charges and expenses to be paid by the Competent Authority upon disposal of the said properties through sale proceeds or by any other legal mode deems fit and proper by it.
4. Application stands disposed of.

26/03/2025



(V.D. Kedar)

Presiding Officer of the
Designated Court Room
No.40, under TADA(P)
Act, 1987, for Bombay
Blast Cases, Greater
Bombay.

Directly typed on computer : 26/03/2025
Signed on : 26/03/2025

**CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED ORDER.**

26/03/2025 AT 5.30 PM

**Mrs.Tanushree C.Kamble
Stenographer(Class-II)**

Name of the Judge	HHJ Shri V.D.Kedar
Date of Pronouncement of order	26/03/2025
Order signed by P.O.	26/03/2025
Order uploaded on	26/03/2025